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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,589	01/27/2004	Takaaki Shimada	2038-323	8968
22429	7590	03/14/2007	EXAMINER	
LOWE HAUPTMAN BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 ALEXANDRIA, VA 22314			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/14/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/764,589	SHIMADA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Melanie J. Hand	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 11 December 2006.

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-22 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/27/06

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .

5)  Notice of Informal Patent Application

6)  Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on December 27, 2006 was filed after the mailing date of the non-final Office action on September 11, 2006. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States:

Claims 1- are rejected under 35 U.S.C. 102(b) as being anticipated by Okuda et al (JP 2001157690).

With respect to **claim 1**: Okuda teaches a pants-type disposable wearing article 1, comprising: a liquid-impervious base sheet (comprising sheets 3,5) defining front and rear waist regions opposed to each other and a crotch region D extending in a longitudinal direction of said article between said front and rear waist regions (Fig. 1); a liquid-absorbent panel 4 extending over

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said crotch region D and further into said front and rear waist regions; said base sheet having, in said front and rear waist regions, a waist-surrounding end zone extending in a transverse direction of said article, a pair of waist lateral zones extending in the longitudinal direction and, in said crotch region D, a pair of crotch lateral zones extending in leg-surrounding directions, respectively; said base sheet being provided with a waist-surrounding first elastic member 22 extending in the transverse direction along said waist-surrounding end zone and being contractible in said transverse direction, a plurality of waist-surrounding second elastic members 21 lying below said first elastic members 22 and being contractible in said transverse direction, and a plurality of leg-surrounding elastic members 61 extending along said crotch lateral zones in the leg-surrounding directions, respectively, and being contractible in said leg-surrounding directions, respectively; said second elastic members 21 being located in said crotch region D and said front and rear waist regions and spaced apart one from another by a predetermined interval in said longitudinal direction; and said waist lateral zones being connected together to form a waist-hole and a pair of leg-holes; wherein each of said second elastic members 21 has fixed end portions 10A secured to said waist lateral zones and said crotch lateral zones in vicinities of respective side edges of said lateral zones, and a free middle portion 12A connecting and extending between said fixed end portions 10A across said panel in said transverse direction and being directly secured neither to said base sheet nor to said panel; and said free middle portions 12A of said second elastic members 21 and said leg-surrounding elastic members 61 cross (Figs. 1,2), without intersecting, one another in at least said crotch lateral zones and are not secured together at their crossing points by virtue of the crossing point being located in the free portion region 12A. (110005-0007,0009,0011,0014,0015)

With respect to **claim 2**: The fixed end portions 10A of the second elastic members 21 located in said crotch region D are closer to the respective side edges of said crotch lateral zones than said leg-surrounding elastic members. (Figs. 1,2)

With respect to **claim 3**: The second elastic members 21 located in said at least one of said front and rear waist regions are applied in the expanded state and thus have a contracted state in which a dimension of said second elastic members as measured in the transverse direction is substantially the same as a transverse dimension of said panel as measured in the transverse direction between transversely opposite side edges of said panel. (¶ 0009)

With respect to **claim 4**: The base sheet comprises a first sheet 3 and a second sheet 5 comprised of two layers (Fig. 5), said first sheet 3 being sandwiched between said panel 4 and said second sheet 5; and said first and second elastic members 22,21, as well as said leg-surrounding elastic members are interposed between said first sheet 3 and said second sheet 5.

With respect to **claim 5**: The base sheet has a third sheet (inner layer of sheet 5) interposed between said first sheet 3 and the second sheet, or outer layer of sheet 5 and said second elastic members 21 are interposed between said first and third sheets 3,5 (Fig. 5); said leg-surrounding elastic members 61 are interposed between the pair of sheets other than the pair of sheets sandwiching said second elastic members 21; and said second elastic members 21 are separated from said leg-surrounding elastic members 61 by said third sheet lying between said second and leg-surrounding elastic members 21, 61, respectively, thereby ensuring that said second elastic members 21 are not secured to said leg-surrounding elastic members 61 at the crossover points of said second and leg-surrounding elastic members 21,61.

With respect to **claim 6**: Article 1 further comprises a plurality of welding spots at which the sheets sandwiching said second elastic members 21 are bonded together; wherein said welding spots are formed in vicinities 10A of transversely opposite side edges of said panel, lie between each pair of adjacent free middle portions 12A of said second elastic members 21 and are spaced apart one from another by a predetermined distance in said longitudinal direction.

(¶0015)

With respect to **claim 7**: The panel 4 comprises a liquid-pervious upper layer sheet 2 adapted to face a wearer's skin, and a liquid-absorbent core interposed between said upper layer sheet and said base sheet. (¶0005)

With respect to **claim 8**: Okuda teaches a pants-type disposable wearing article 1, comprising: a liquid-impervious base sheet defining a front waist region, a rear waist region, and a crotch region extending between the front waist region and the rear waist region in a longitudinal direction of said article, said front and rear waist regions being attached to each other along transversely opposite side edges thereof so as to form a waist-hole and a pair of leg-holes (Fig. 1); a liquid-absorbent panel attached to an inner side of said base sheet; a first elastic member 22 extending along a peripheral edge of said waist-hole; a plurality of second elastic members 21 extending across said liquid-absorbent panel in at least one of said front and rear waist regions and between the transversely opposite side edges of said front and rear waist regions; and a plurality of third elastic members 61 extending along peripheral edges of said leg-holes; wherein each of said second elastic members 21 has opposite end portions 10A located outward beyond transversely opposite side edges of said liquid-absorbent panel and being

secured to said base sheet, and a middle portion 12A connecting said opposite end portions, extending between the transversely opposite side edges of said liquid-absorbent panel, and being free of direct attachment to both said base sheet and said liquid-absorbent panel; and wherein the middle portions 12A of said second elastic members 21 cross over said third elastic members 61 and are not secured to said third elastic members 61 at crossover points of said second and third elastic members 21,61.

(¶¶0005-0007,0009,0011,0014,0015)

With respect to **claim 9**: The article 1 has a relaxed state in which the middle portions of said second elastic members are allowed to contract to a transverse dimension which, as measured in a transverse direction of said article, is substantially the same as or slightly larger than a transverse dimension of said panel as measured in the transverse direction between the transversely opposite side edges thereof. (¶0009)

With respect to **claim 10**: Each of said second elastic members is entirely free of direct attachment to said base sheet except at the opposite end portions. (¶¶0009,0014,0015)

With respect to **claim 11**: The base sheet comprises first and second sheets, specifically sheets 3 and the outer layer of sheet 5, wherein the said first sheet 3 is disposed between said liquid-absorbent panel and said second sheet, and said second and third elastic members 21,61, respectively, are disposed between said first and second sheets (Fig. 5); said base sheet further comprises a third sheet (i.e. the inner layer of sheet as seen in Fig. 5) disposed between said first sheet 3 and said second sheet; and said second elastic members 21 are separated from said third elastic members 61 by said third sheet lying between said second and third

elastic members, thereby ensuring that said second elastic members 21 are not secured to said third elastic members 61 at the crossover points of said second and third elastic members.

With respect to **claim 12**: The base sheet further comprises bonding spots joining said first and second sheets in regions located between the middle portions 12A of adjacent said second elastic members 21, said bonding spots limiting displacement of the middle portions of said second elastic members in the longitudinal direction of said article without affecting contraction of said middle portions in a transverse direction of said article. (¶¶0014,0015)

Okuda does not teach that said second elastic members 21 are disposed between said second sheet 3 and said third sheet, and thus does not teach bonds between said second and third sheets. However, such positioning of said second elastics between the layers of the base sheet is well known in the art, thus it would be obvious to one of ordinary skill in the art to modify the device of Okuda so as to position the second elastics between the second and third sheets with a reasonable expectation of success, since the device of Okuda seeks to solve a similar problem in the art, i.e. providing an absorbent article with elastics for proper fit.

With respect to **claim 13**: The base sheet comprises first and second sheets, said first sheet is disposed between said liquid-absorbent panel and said second sheet, and said second elastic members 21 are disposed between said first and second sheets (Fig. 5); said base sheet further comprising bonding spots joining said first and second sheets in regions located between the middle portions of adjacent said second elastic members, said bonding spots limiting displacement of the middle portions of said second elastic members in the longitudinal direction of said article without affecting contraction of said middle portions in a transverse direction of said article. (¶¶0014,0015)

With respect to **claim 14**: Some of said bonding spots are arranged along said transversely opposite side edges of said panel and between entire said panel on the one hand and the end portions of said second elastic members on the other hand. (Fig. 1) (¶¶ 0014,0015)

With respect to **claim 15**: The base sheet, in an entire region 12A underlying said panel, is free of said bonding spots. (¶¶ 0014,0015)

With respect to **claim 16**: The bonding spots are presented between every pair of adjacent said second elastic members 21 so as to prevent said adjacent second elastic members from forming a bundle with each other. (¶¶ 0014,0015)

With respect to **claim 17**: The base sheet comprises first and second sheets, namely sheet 3 and the outer layer of sheet 5, said first sheet 3 is disposed between said liquid-absorbent panel and said second sheet, and said second elastic members 21 are disposed between said first and second sheets; said article 1 further comprising at least one third sheet (i.e. the inner layer of sheet 5), said third sheet being disposed between said second elastic member and said second sheet, and secured to said second sheet. (Fig. 5)

Okuda does not teach that said third sheet carries printed indicia in a region corresponding to the middle portions 12A of said second elastic members 21. Pozniak teaches an absorbent article having printed indicia which extend transversely across the front waist region of said article that, when combined with the article of Okuda, would correspond to the middle portions 12A taught by Okuda. Pozniak teaches that these indicia serve as a guide for proper fastening and fit of the diaper, therefore it would be obvious to one of ordinary skill in the

art to modify the device of Okuda so as to contain a third sheet carrying printed indicia as taught by Pozniak to ensure proper fastening and fit of the article.

With respect to **claim 18**: The base sheet comprises first and second sheets, namely sheet 3 and the outer layer of sheet 5, and said second and third elastic members 21,61, respectively, are disposed between said first and second sheets; said base sheet further comprising a plurality of adhesive zones bonding said first and second sheets and end portions of said third elastic members 61 together; each of said adhesive zones being disposed, in the longitudinal direction, between the middle portions 12A of one pair of adjacent said second elastic members 21, and, in a transverse direction of said article, between entire said panel on the one hand and one of the end portions 10A of each of said second elastic members 21 in said pair on the other hand. (¶¶ 0015,0022)

With respect to **claim 19**: Each of said adhesive zones is spaced in the longitudinal direction of said article from the middle portions 12A of the adjacent second elastic members 21 between which said adhesive zone is disposed. (¶¶ 0015,0022)

With respect to **claim 20**: Each of said adhesive zones is elongated in the transverse direction of said article, and spaced in said transverse direction from the end portions 10A of the adjacent second elastic members 21 between which said adhesive zone is disposed. (¶ 0015,0022)

With respect to **claim 21**: Article 1 further comprises a plurality of further adhesive zones different from the adhesive zones that bond said first and second sheets and the end portions of said third elastic members 61 together, said further adhesive zones bonding the end portions

10A of the second elastic members to the base sheet; wherein each of said adhesive zones is spaced in said transverse direction from the further adhesive zones at the end portions of the adjacent second elastic members 21, between which said adhesive zone is disposed. (¶ 0015,0022)

With respect to **claim 22**: The third sheet being disposed between said second elastic member 21 and said second sheet, and secured to said second sheet. (Fig. 5) Okuda does not teach a third sheet that carries printed indicia in a region corresponding to the middle portions of said second elastic members.

Pozniak teaches an absorbent article having printed indicia that extend transversely across the front waist region of said article that, when combined with the article of Okuda, would correspond to the middle portions 12A taught by Okuda. Pozniak teaches that these indicia serve as a guide for proper fastening and fit of the diaper, therefore it would be obvious to one of ordinary skill in the art to modify the device of Okuda so as to contain a third sheet carrying printed indicia as taught by Pozniak to ensure proper fastening and fit of the article.

### **Conclusion**

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on December 27,2006 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

March 3, 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER



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